

ESTTA Tracking number: **ESTTA190055**Filing date: **01/31/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Blowfish LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	23 Chagall Rd Marlboro, NJ 07746 UNITED STATES		

Attorney information	Holly Pekowsky, Esq. Amster, Rothstein & Ebenstein LLP 90 Park Avenue New York, NY 10016 UNITED STATES ptodocket@arelaw.com Phone:212-336-8000
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Registration Subject to Cancellation

Registration No	3290738	Registration date	09/11/2007
Registrants	Rohn, Debbie 4794 Timber Ridge Drive Cadillac, MI 49601 UNITED STATES Rohn, Dean 4794 Timber Ridge Drive Cadillac, MI 49601 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 1990/03/01 First Use In Commerce: 1990/03/01 All goods and services in the class are cancelled, namely: Baby bunting; Bloomers; Boxer briefs; Boxer shorts; Coats; Dresses; Hats; Jackets; Leggings; Mittens; Pants; Shirts; Shoes; Shorts; Skirts; Slippers; Slips; Socks; Suits; Sweat pants; Sweat shirts; Sweaters; Ties; Underwear
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Other	Non-use in commerce

Attachments	Petition to Cancel re Blowfish v Dean and Debbie Rohn - GUPPIE.pdf (17 pages)(888596 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Holly Pekowsky/
Name	Holly Pekowsky, Esq.
Date	01/31/2008

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 3,290,738

For the mark : GUPPIE & Design
Int'l Class : 25
Date registered : September 11, 2007

----- X	
BLOWFISH LLC,	:
	:
Petitioner,	:
	:
v.	:
	:
DEAN ROHN and DEBBIE ROHN,	:
	:
Registrants.	:
----- X	

Cancellation No.

PETITION TO CANCEL

In the matter of U.S. Trademark Registration No. 3,290,738 registered on the Principal Register on September 11, 2007 to Dean Rohn and Debbie Rohn, individuals, (collectively, "Registrants") for the mark GUPPIE & Design (the "Subject Mark") for baby bunting; bloomers; boxer briefs; boxer shorts; coats; dresses; hats; jackets; leggings; mittens; pants; shirts; shoes; shorts; skirts; slippers; slips; socks; suits; sweat pants; sweat shirts; sweaters; ties; underwear in International Class 25 (the "Subject Registration"), Blowfish LLC, a limited liability company having a place of business at 23 Chagall Rd, Marlboro, New Jersey 07746 ("Petitioner") believes that it is or will be damaged by the above-identified registration and therefore, petitions to cancel the same.

The grounds for the Petition to cancel are as follows:

COUNT I

**CANCELLATION BASED ON FRAUD
ON THE PATENT AND TRADEMARK OFFICE**

1. On or about September 29, 2006, Petitioner filed an application to federally register the trademark GUPPY LOVE in connection with bottoms; footwear; jeans; tops in International Class 25, which Application was subsequently assigned Serial No. 77/010,497 ("Petitioner's Application"). A copy of Petitioner's Application is annexed hereto and identified as Exhibit 1.

2. On February 17, 2007, the Trademark Office issued an Office Action suspending prosecution of Petitioner's Application pending registration or abandonment of the then-pending Application which subsequently matured into the Subject Registration on the basis of alleged likelihood of confusion between the Subject Mark and the mark covered by Petitioner's Application, GUPPY LOVE. A copy of the February 17, 2007 Office Action is annexed hereto as Exhibit 2.

3. Upon information and belief, the Subject Registration was fraudulently obtained.

4. Specifically, upon information and belief, on or about April 10, 2006, when Registrants, through their counsel, filed the use-based Application which subsequently matured into the Subject Registration (the "Subject Application"), Registrants falsely represented to the U.S. Patent and Trademark Office that the Subject Mark was being used in commerce in connection with all the goods identified in the Subject Application.

5. Upon information and belief, at the time this false representation was made, Registrants knew or should have known that the Subject Mark was not being used in commerce with all of the goods identified in the Subject Application. Specifically, upon information and belief, at the time this representation was made, the Subject Mark was not being used in connection with shoes.

6. Upon information and belief, the Subject Mark was never used on shoes.

7. Upon information and belief, Registrants' false representation was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to register the Subject Mark, and reasonably relying upon the truth of said false statement, the U.S. Patent and Trademark Office did, in fact, grant said registration.

8. Since Petitioner's Application has been potentially refused registration based on a perceived likelihood of confusion with the Subject Registration, and the potential refusal should become actual now that the Subject Registration has issued, the continued existence of the Subject Registration on the Principal Register has damaged and will continue to damage Petitioner.

9. For at least the reasons stated herein, the continued registration of the Subject Registration is damaging and will continue to damage Petitioner.

COUNT II NON-USE IN COMMERCE

10. Petitioner repeats and realleges each and every allegation set forth in the preceding Paragraphs as though fully set forth herein.

11. Upon information and belief, the Subject Mark was not in use in commerce in connection with all of the goods covered by the Subject Application when the Subject

Application was filed. Specifically, upon information and belief, on or about April 10, 2006, when Registrants, through their counsel, filed the Subject Application, the Subject Mark was not being used in commerce in connection with shoes.

12. Since Petitioner's Application has been potentially refused registration based on a perceived likelihood of confusion with the Subject Registration, and the potential refusal should become actual now that the Subject Registration has issued, the continued existence of the Subject Registration on the Principal Register for shoes covered by the Subject Registration which were not, at the time of the filing of the Subject Application, in use in commerce has damaged and will continue to damage Petitioner.

13. For at least the reasons stated herein, the continued registration of the Subject Registration for shoes has damaged and will continue to damage Petitioner.

COUNT III ABANDONMENT

14. Petitioner repeats and realleges each and every allegation set forth in the preceding Paragraphs as though fully set forth herein.

15. Upon information and belief, Registrants have ceased use of the Subject Mark in connection with shoes.

16. As a result, Registrant has abandoned the Subject Mark with respect to shoes.

17. Since Petitioner's Application has been potentially refused registration based on a perceived likelihood of confusion with the Subject Registration, and the potential refusal should become actual now that the Subject Registration has issued, the

continued existence of the Subject Registration on the Principal Register for shoes has damaged and will continue to damage Petitioner.


18. For at least the reasons stated herein, the continued registration of the Subject Registration for shoes is damaging and will continue to damage Petitioner.

WHEREFORE, Petitioner prays that the within Petition be granted and U.S. Trademark Registration No. 3,290,738 be canceled on the basis of fraud on the Patent and Trademark Office, or, at the very least, that the Subject Registration be canceled with respect to shoes, based on failure to use the Subject Mark on these goods in commerce and/or abandonment of the Subject Mark with respect to these goods.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Petitioner Blowfish LLC
90 Park Avenue
New York, NY 10016
(212) 336-8000 (Telephone)
(212) 336-8001 (Facsimile)

Dated: New York, New York
January 31, 2008

By: 
Anthony F. Lo Cicero
Holly Pekowsky

CERTIFICATE OF SERVICE

I hereby certify that true and complete copies of the foregoing PETITION FOR CANCELLATION has been served on Registrants, by delivering said copies via Federal Express, overnight delivery, prepaid to:

Dean Rohn
4794 Timber Ridge Drive
Cadillac, MI 49601

- and -

Debbie Rohn
4794 Timber Ridge Drive
Cadillac, MI 49601

By: 
Holly Pekowsky

Dated: January 31, 2008
New York, New York

Document Description: TEAS Plus New Application Mail / Create Date: 29-Sep-2006

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PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 09/30/2008)

Trademark/Service Mark Application, Principal Register**TEAS Plus Application**

Serial Number: 77010497

Filing Date: 09/29/2006

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	GUPPY LOVE
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	GUPPY LOVE
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
APPLICANT INFORMATION	
*OWNER OF MARK	Blowfish LLC
*STREET	23 Chagall Rd
*CITY	Marlboro
*STATE (Required for U.S. applicants)	New Jersey
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	07746
PHONE	732 310 6200
FAX	732 409 3866

EXHIBIT 1

EMAIL ADDRESS	donw@blowfishshoe.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
*TYPE	LIMITED LIABILITY COMPANY
*STATE/COUNTRY WHERE LEGALLY ORGANIZED	Delaware
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	025
*DESCRIPTION	Bottoms; Footwear; Jeans; Tops
*FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
CORRESPONDENCE INFORMATION	
*NAME	Blowfish LLC
FIRM NAME	Blowfish LLC
*STREET	23 Chagall Rd
* CITY	Marlboro
* STATE (Required for U.S. applicants)	New Jersey
* COUNTRY	United States
* ZIP/POSTAL CODE (Required for U.S. applicants only)	07746
PHONE	732 310 6200
FAX	732 409 3866
* EMAIL ADDRESS	donw@blowfishshoe.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes

FEE INFORMATION

NUMBER OF CLASSES	1
FEE PER CLASS	275
TOTAL FEE DUE	275

SIGNATURE INFORMATION

* SIGNATURE	/donweiss/
* SIGNATORY'S NAME	Don Weiss
SIGNATORY'S POSITION	Authorized Signatory
* DATE SIGNED	09/28/2006

FILING INFORMATION SECTION

SUBMIT DATE	Fri Sep 29 14:02:00 EDT 2006
TEAS STAMP	USPTO/FTK-204.94.57.34-20 060929140200667686-770104 97-35021f7b2a5c4418a7bb0a c542f86ff47f-DA-537-20060 928204807694688

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 09/30/2008)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77010497

Filing Date: 09/29/2006

To the Commissioner for Trademarks:

MARK: GUPPY LOVE (Standard Characters, see mark)

The literal element of the mark consists of GUPPY LOVE. The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Blowfish LLC, a limited liability company legally organized under the laws of Delaware, having an address of 23 Chagall Rd, Marlboro, New Jersey, United States, 07746, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 025: Bottoms; Footwear; Jeans; Tops

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.

Correspondence Information: Blowfish LLC

23 Chagall Rd

Marlboro, New Jersey 07746

732 310 6200(phone)

732 409 3866(fax)

donw@blowfishshoe.com (authorized)

A fee payment in the amount of \$275 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /donweiss/ Date: 09/28/2006
Signatory's Name: Don Weiss
Signatory's Position: Authorized Signatory

RAM Sale Number: 537
RAM Accounting Date: 10/02/2006

Serial Number: 77010497
Internet Transmission Date: Fri Sep 29 14:02:00 EDT 2006
TEAS Stamp: USPTO/FTK-204.94.57.34-20060929140200667
686-77010497-35021f7b2a5c4418a7bb0ac542f
86ff47f-DA-537-20060928204807694688

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GUPPY LOVE

Document Description: **Suspension Letter** Mail / Create Date: **17-Feb-2007**[Previous Page](#)[Next Page](#)You are currently on page **1** of **3**

To: Blowfish LLC (donw@blowfishshoe.com)
Subject: TRADEMARK APPLICATION NO. 77010497 - GUPPY LOVE - N/A
Sent: 2/17/2007 9:29:07 PM
Sent As: ECOM112@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

UNITED STATES PATENT AND TRADEMARK OFFICE**SERIAL NO:** 77/010497**APPLICANT:** Blowfish LLC***77010497*****CORRESPONDENT ADDRESS:**

BLOWFISH LLC
23 CHAGALL RD
MARLBORO, NJ 07746-2408

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include
the words "Box Responses - No Fee."

MARK: GUPPY LOVE**CORRESPONDENT'S REFERENCE/DOCKET NO:** N/A**CORRESPONDENT EMAIL ADDRESS:**donw@blowfishshoe.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 77/010497

NOTICE OF SUSPENSION

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. 37 C.F.R. §2.67. However, the examining attorney will conduct periodic status checks and may issue inquiries at 6 month intervals from the mailing date of this notice. TMEP §716.05. If a status inquiry Office action issues, applicant will have 6 months from the mailing or e-mailing date of the status inquiry to respond. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the

application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

The examining attorney has searched the Office records and has found no similar registered mark that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

Action on this application is suspended pending the disposition of:

- Application Serial No(s). **78857582**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) **is attached**.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

/Darryl M. Spruill/
Trademark Attorney
Law Office 112
(571) 272-9418 (office)
(571) 273-9418 (fax)
darryl.spruill@uspto.gov

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include the relevant serial number or registration number, if existing.

Print: Feb 17, 2007

78857582

DESIGN MARK

Serial Number

78857582

Status

NON-FINAL ACTION - MAILED

Word Mark

GUPPIE

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Rohn, Debbie INDIVIDUAL UNITED STATES 4794 Timber Ridge Drive Cadillac
MICHIGAN 49601

Owner

Rohn, Dean INDIVIDUAL UNITED STATES 4794 Timber Ridge Drive Cadillac
MICHIGAN 49601

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Baby bunting;
Bloomers; Boxer briefs; Boxer shorts; Coats; Dresses; Hats; Jackets;
Leggings; Mittens; Pants; Shirts; Shoes; Shorts; Skirts; Slippers;
Slips; Socks; Suits; Sweat pants; Sweat shirts; Sweaters; Ties ;
Underwear. First Use: 1990/03/01. First Use In Commerce: 1990/03/01.

Description of Mark

The mark consists of a guppie with a tie on as the G in the word
GUPPIE.

Filing Date

2006/04/10

Examining Attorney

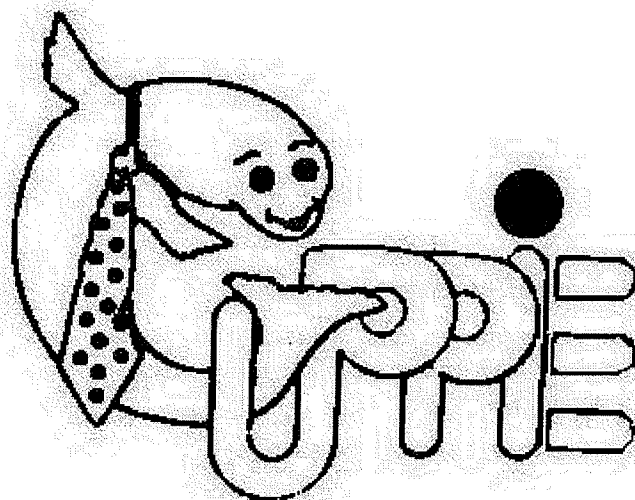
BRADLEY, EVELYN

Attorney of Record

Melinda B. Buurma

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